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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

FORT WAYNE MORTGAGE COMPANY,
Petitioner,

v.

JIMMY E. WOOD,
Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF OF RESPONDENT IN OPPOSITION TO THE PETITION

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QUESTION PRESENTED

In the period of late November, 1979 through March of 1980, the 96th Congress passed three laws pertaining to preemption of State finance charge limits for mobile home installment purchase contracts or loans. Each of these laws contained provisions whereby a State could elect to cancel or override Federal preemption. The question presented in the present petition is whether the override provisions for FHA/VA insured mobile home contracts will be construed to require State action beyond the wording of the statute, the intent of Congress, or the interpretation of the agency charged with its administration.

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BRIEF OF RESPONDENT IN OPPOSITION TO THE PETITION

STATEMENT OF THE CASE

A. Introduction.

Generally during the time period of April 1980 through March of 1983, companies financing mobile home purchases in certain States were required to meet state limitations on finance charge rates or else comply with one of three Federal statutes allowing the preemption of State limits on finance charges. The present case involves a finance company which charged the higher rates but did not use contracts which qualified for any Federal preemption. The fi-

nance company comes to this Court seeking an artificial interpretation of the FHA/VA preemption statute which would sanction otherwise illegal conduct.

The question presented does not raise a constitutional issue. It is not an issue upon which there has been a split in the circuits. In view of the limited number of mobile home contracts affected by the Court of Appeals' decision, and in view of the general inapplicability of Federal preemption since 1983, the petition does not present an important question of Federal law of sufficiently general application to warrant review by this Court.

B. Statement Of The Facts.

The statement of facts presented by petitioner is accurate but incomplete. To supplement those facts, it should be noted that the finance charge on the Wood mobile home contract equated to an annual APR percentage rate of 18.5%. The law in Georgia at the time of the contract permitted a 10% add-on finance rate equivalent to 14.84% APR on a 15 year contract. (O.C.G.A. Section 10-1-33). Over the life of the contract, plaintiff would be required to pay $10,387.60 more than permitted by Georgia law.

It should also be noted that Fort Wayne Mortgage financed mobile home purchases on a conventional basis, as well as insured by FHA/VA, and that conventional purchases are included within the class in this case. As is true of the FHA/VA mobile home contracts, the conventional mobile home contracts also fail to comply with any of the available Federal preemption statutes and exceed the State limits on

finance charges. See Appendix B for a copy of such a contract included in the class in this case.

C. Proceedings Below.

Respondent essentially agrees with the statement of proceedings below. The Eleventh Circuit opinion at issue is reported as *Doyle v. Southern Guaranty Corporation*, 795 F.2d 907 (11 Cir. 1986), and the decision of the Georgia Supreme Court is reported as *Southern Guaranty Corporation v. Doyle*, 256 Ga. 790, 353 S.E.2d 510 (1987). The decision of the Eleventh Circuit adopting the Supreme Court's response to the certified question is at 818 F.2d 754 (11 Cir. 1987).[1]

D. Reasons For Denying The Writ.

Petitioner's claim is particularly inappropriate for a writ of certiorari. Petitioner asks this Court to overturn a unanimous panel opinion of the Eleventh Circuit where there is no contrary authority to support petitioner's contentions. Secondly, petitioner advances a construction of the 1979 FHA/VA preemption stat-

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[1] It is incorrect for the finance company to refer to this case as involving interest rates and usury. It must be noted that the Georgia Motor Vehicle Sales Finance Act (GMVSFA), O.C.G.A. Section 10-1-30, *et seq*, is not a "usury" statute and nothing contained in that statute governs the rate of interest that can or cannot be charged in connection with any "loan." It has long been the law in Georgia that a conditional sales contract or retail installment sales contract involving the time-price differential does not involve usury or the assessment of interest. *E. Tris Napier Co. v. Trawick*, 164 Ga. 781, 782, 139 S.E. 552 (1927); *Rigdon* v. Walker Sales & Service, Inc., 161 Ga.App. 459, 461, 288 S.E.2d 711 (1982). Thus, in dealing with the issues before the Court, the terms "usury" and "interest" and "loan" have nothing to do with the Georgia statute involved, and except in general usage, are misnomers.

utes that is contrary to that of the agency responsible for the administration of those laws. The arguments of petitioner do not have merit or raise any important issue of wide applicability.

Petitioner is pursuing this action with the simple hope of obtaining a reprieve from having violated the finance rate limits in Georgia and continuing to unlawfully collect from this class of mobile home purchasers a rate of return higher than any long-term interest rates existent in this country.

ARGUMENT AND AUTHORITIES

A. Introduction.

Before surveying the statutes at issue in this case, respondent submits that it is important to recognize at the outset the disparity of bargaining power in the context of mobile home purchases. Contracts of adhesion are the rule.[2] This area of commerce is marked by a

> history of abuse associated with mobile home lending. In large part, these abuses have resulted from the fact that mobile homes are usually financed under motor vehicle and retail installment sale laws, which allow lending practices that are not appropriate for loans as large as that required in a mobile home sale. As personalty, mobile homes have been also subject to summary repossessions in the event of default.

FHLBB General Counsel Op. No. 1981-2, *Fed. Banking L.Rep.* (CCH) 83,002 (July 28, 1981). Moreover,

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[2] Rakoff, *Contracts of Adhesion*, 96 Harv.L.Rev. 1174, 1177 (1983).

as a group, mobile home credit buyers are more vulnerable than the average homeowner because they are poorer and less well educated. U.S. Dept. of Commerce, Bureau of the Census, *Annual Housing Survey, Part A,* (1974).

Mobile home credit buying is dominated by poorer families. In 1980, 400,000 families were mobile homeowners with incomes below the poverty line. U.S. Dept. of Commerce, Bureau of the Census, *U.S. Metropolitan Housing Characteristics*, Table A-8 (1983). Fully 35% of mobile homeowners have incomes under $10,000.00. *Ibid.* About 25% of mobile homeowners are senior citizens, and young married couples comprise another 25%, FTC, *Staff Report on Mobile Home Sales & Service* at 37-39 (1979). More than for homeowners overall, 21% of mobile homeowners have less than a sixth grade education, and over half the mobile homes are located outside of metropolitan areas, *id.*, where there is frequently less access to consumer education and legal assistance.

When high finance charge rates are used to finance mobile home purchases (as when state limits are preempted) the debt is harder to manage and families are more likely to become overextended. The frequency of delinquency increases, and with it the occasion for collection abuses. When mobile homeowners are late in making a payment, it is often for reasons beyond their control. The FTC found that like other consumer borrowers, lapses of income from unemployment, uninsured or underinsured illness or injury, divorce, termination or reduction in pensions or other benefits, and unmanageable expenses like heating bills cannot be avoided. FTC, *Credit Practices Rule State-*

ment of Basis and Purpose and Regulatory Analysis, 49 Fed.Reg. 7740, 7744, note 27 (1984).

Because of these disadvantages, mobile homeowners are disproportionately victims: they are easier to overawe, less able to understand or defend their rights and easier to intimidate. As the Presiding Officer in the FTC hearings on mobile homes summarized it:

> It is also clear that consumers purchasing mobile homes rely entirely on the expertise of both the dealer and the manufacturer to handle the sometimes complicated details of the entire transaction.

FTC, *Report of the Presiding Officer on Proposed Trade Regulation Rule: Mobile Home Sales & Services*, at 31 (1979). They were also found to be less able to afford lawyers to discern their rights or to seek legal advice. *Id.* at 31, 38.

Congress undoubtedly had these factors in mind when it considered preemption for mobile home contracts in November and December of 1979 and March of 1980. Contrary to the impression that the finance company would leave from its petition, interest rates were not so high and availability of funds not so severe that finance companies were allowed to set rates for mobile home purchases free from consumer protection provisions. Each preemption scheme which will be analyzed in this brief contained some degree of consumer protection not required for preemption of conventional home lending rates.[3]

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[3] Consumer protection for housing is especially important. One who wrongfully loses his home suffers "irreparable injury." If a person loses his home to repossession or foreclosure, then he

B. The Three Federal Preemption Statutes.

The first preemption statute at issue was the VA preemption provision enacted as Section 401 of the Veterans' Disability Compensation and Survivor's Benefit Amendments of 1979, Pub.L. No. 96-128, 93 Stat. 986-87, approved November 28, 1979. It is as follows:

> If, under any law of the United States, loans and mortgages insured under title I or title II of the National Housing Act are exempt from the application of the provisions of any State constitution or law (1) limiting the rate or amount of interest, discount points, or other charges which may be charged, taken, received, or reserved by lenders, (2) restricting the manner of calculating such interest (including prohibition of the charging of interest on interest), or (3) requiring a minimum amortization of principal, then loans guaranteed or insured under this chapter are also exempt from the application of such provisions.

38 U.S.C.A. Section 1828 (as amended 1981).

> Under this provision, wherever loans insured by the Federal Housing Administration (FHA) are exempted from a State anti-usury provision by a provision of the National Housing Act, ... VA loans would also be exempted. In this way, the coordination of Federal policy regarding the exemption of VA and FHA home loans from State anti-usury provisions would be assured.

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must often "live in inadequate, often health endangering housing;" hence, the irreparable injury. *Johnson v. U.S. Dept. of Agriculture*, 734 F.2d 774, 789 (11 Cir. 1984).

S.Rep. No. 260, 96th Cong., 1st Sess. 29, *reprinted in* 1979 U.S. Code Cong. & Ad. News 1894, 1915.

The FHA preemption statute was enacted next some three weeks later on December 21, 1979. It was enacted as Section 308 of the Housing and Community Development Amendments of 1979, Pub.L. No. 96-163, 93 Stat. 1101, 1113-14. The statute is codified at 12 U.S.C.A. Section 1735f-7, as follows:

> (a) The provisions of the constitution of any State expressly limiting the rate or amount of interest, discount points, or other charges which may be charged, taken, received, or reserved by lenders and the provisions of any State law expressly limiting the rate or amount of interest, discount points, or other charges which may be charged, taken, received, or reserved shall not apply to any loan, mortgage, or advance which is insured under subchapter I or II of [the National Housing Act].
>
> (b) The provisions of subsection (a) of this section shall apply to loans, mortgages, or advances made or executed in any State until the effective date (after December 21, 1979) of a provision of law of that State limiting the rate or amount of interest, discount points, or other charges on any such loan, mortgage or advance.

Although this section does not refer expressly to mobile home loans, the National Housing Act includes certain mobile home loans within the class of insurable loans. 12 U.S.C.A. Section 1703.

For ease of reference and because these two statutes operated in tandem, they will be referred to as FHA/VA preemption.

The third federal preemption statute is Section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub.L. No. 96-221, Section 501(c), 94 Stat. 161, codified at 12 U.S.C.A. Section 1735f-7 (note), approved on March 31, 1980. For ease of reference this will be referred to as DIDMCA. In DIDMCA, Congress provided that preemption would not exist for any credit sale secured by a manufactured home unless the "terms and conditions relating to such loan, mortgage, credit sale, or advance comply with the consumer protection provisions specified in regulations prescribed by the Federal Home Loan Bank Board." Section 501(c). The statute went on to provide that the FHLBB regulations shall include restrictions on balloon payments, prepayment penalties, late charges, foreclosure, repossession or acceleration without a thirty day notice to the purchaser, refunds of finance charges by at least the actuarial method, and such other provisions as the FHLBB may prescribe. *Id.*

It is especially important to note that DIDMCA preemption applied to all "federally related mortgage loans" as broadly defined in 12 U.S.C.A. Section 1735f-5(b). Thus DIDMCA preemption was available for VA insured transactions such as the mobile home purchase contract by respondent Wood. *Doyle,* 795 F.2d at 911.

The FHLBB regulations enacted pursuant to DIDMCA are found at 12 CFR Section 590.4.[4]

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[4] The Court of Appeals pointed out that consumer protections under the FHA/VA schemes and DIDMCA while not identical, address similar concerns and overlap substantially. 795 F.2d at 912. Probably the primary difference between these schemes,

C. The Fort Wayne Contracts Vis-a-vis The Three Statutes.

The financing contract between Fort Wayne and the named plaintiff—Jimmy Wood—is of the VA variety. As the Court of Appeals noted and as the parties agree, the VA preemption piggybacks the preemptions under the FHA statute. Thus, the inquiry faced by the district court and the Court of Appeals was whether the finance charge rate, which exceeded Georgia law on this contract, was permissible either under the FHA/VA scheme or under DIDMCA.

Plaintiffs argued in the courts below that once DIDMCA became law, it provided the only means for preempting state limits on mobile home finance rates. This was based on the fact that DIDMCA was the first statute to specifically mention preemption for "mobile homes", as the earlier VA and FHA preemptions were for all loans or contracts in general made under the VA or FHA programs. Also, DIDMCA preemption for mobile home purchases included all "federally related mortgage loans", 12 U.S.C.A. Section 1735f-5(b), including VA and FHA transactions. Since DIDMCA gave more complete protection to mobile home purchasers from creditor abuse, and since DIDMCA was the latest expression of Congress and the only specific legislation mentioning mobile home transactions, it was submitted that this became the only means to federally preempt state law limits. This

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and one not noted by the Court of Appeals, is the protection under DIDMCA which requires mobile home purchasers to be given thirty days prior notice and an opportunity to cure any default before the contract can be accelerated or the mobile home repossessed or foreclosed. DIDMCA Section 501(c)(2); 12 CFR Section 590.4(h)(1), (2).

argument was accepted by the district court,[5] but rejected by the Court of Appeals.[6]

The finance company form contracts at issue in this case clearly did not qualify for DIDMCA preemption. The contract with petitioner Jimmy Wood provided that "if buyer defaults in the payment of the installment or the performance of the other obligations provided herein, the entire balance of the total of payments may be declared immediately due." This was in direct conflict with the DIDMCA requirement of thirty days advance notice and a right to cure. 12 C.F.R. Section 590.4(h). The form contract also imposed late charges on purchasers if a payment was not made within ten days of the due date. The DIDMCA regulations prevented the imposition of late charges until fifteen days had passed. 12 C.F.R. Section 590.4(f)(4).[7] Thus, while the Court of Appeals found that DIDMCA was not the exclusive means to preempt state finance charge limits, it was a means unavailable to this finance company because of the defects in its form contract. This left only the 1979

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[5] See the district court's order at Appendix E to the petition, pages 33a-36a.

[6] *Doyle*, 795 F.2d at 909-912.

[7] As the Court of Appeals put it, "Both the Doyle and Wood contracts permit assessment of a late charge for any payment which is ten days late and do not contain a requirement of notice before acceleration or foreclosure. Under this Court's recent decision in *Quiller v. Barclays American/Credit, Inc.*, 764 F.2d 1400 (11th Cir. 1985) *(en banc), cert. denied,* ___ U.S. ___, 106 S.Ct. 1992, 90 L.Ed.2d 673 (1986), the Doyle and Wood contracts are not entitled to the DIDMCA preemption." 795 F.2d at 911.

FHA/VA preemption as a justification for the high rates charged.[8]

D. The State Override Of FHA/VA Preemption.

Once the Court of Appeals decided that it was not mandatory that FHA/VA mobile home financing contracts comply with DIDMCA, and that the Fort Wayne form contracts did not in fact comply with DIDMCA, it became necessary to determine whether the contracts were eligible for preemption under the FHA/VA statutes. The controlling Code section is at 12 U.S.C.A. Section 1735f-7(b), which is quoted in full at page 8. As the parties agree, if this FHA preemption was still valid for Georgia contracts, it would apply also to VA insured mobile home contracts. If the FHA preemption was no longer available in Georgia, then VA preemption would not be available either. 795 F.2d at 912.

The reason why FHA/VA preemption was not available to justify the high finance charges assessed by Fort Wayne is that the State of Georgia overrode FHA/VA preemption when it considered and reimposed its finance charge limits on mobile home contracts through legislation enacted on March 20, 1980.

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[8] On its non FHA/VA mobile home contracts, the finance company was just as deficient in complying with the required consumer protections. In the McQuaig contract which is Appendix B to this brief, late charges are imposed immediately upon default in violation of 12 C.F.R. Section 590.4(f)(4). Upon any default in payment, the finance company reserves the right to "declare said indebtedness to be immediately due and payable and...have the remedies of a secured party under the Uniform Commercial Code, including without limitation, the right to take possession of the collateral by any lawful means...." This violates § 501(c)(2) of DIDMCA and 12 C.F.R. Section 590.4(h).

On that date, Georgia Laws 1980, page 523, codified at O.C.G.A. Section 10-1-33 became effective. In that Code section, the Georgia legislature revisited the area of finance charges for mobile home contracts, decided to continue to limit the finance charges that could be collected, but increased the finance charges from an 8% to 10% add-on rate. *Id.*[9] Fort Wayne Mortgage argues that the Court of Appeals was in error in finding that Georgia overrode FHA/VA preemption when its legislature imposed those limits on mobile home finance charges without specifically stating that the new limits on finance charges applied to FHA/VA insured transactions. The Court of Appeals opinion sets forth several compelling reasons why petitioner's contention is wrong. Respondent adopts those reasons and amplifies them somewhat in the following.

(a) Petitioner's Argument Rests Upon An Inconsistent Application Of The Preemption Statute.

The effect of 12 U.S.C.A. Section 1735f-7(b) is to remove FHA/VA preemption if a State imposed limits on finance charge rates after December 21, 1979. The finance company argues that the phrase "such loan, mortgage or advance" in subsection (b) requires a State law to specifically mention that the new limit on finance charges applies to FHA/VA insured transactions.

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[9] An add-on rate is one in which the principal (e.g., $10,000) is multiplied by the term of the contract (e.g., 15 years) and then again by the add-on rate per hundred dollars (e.g., $10 per $100 financed). In this example, the permissible finance charge would be $10,000 x 15 x .10 = $15,000. This would then be added to the $10,000 principal for a total of $25,000 to be paid in equal installments over the life of the contract.

The first oddity in this argument is that the preemption of state finance charge limits in subsection (a) of the statute is not premised or dependent upon the existence of State laws specifically worded to apply specifically to FHA/VA transactions. Congress assumed that all such laws would apply to FHA/VA transactions. That same understanding must necessarily apply to subsection (b) and makes it quite rational that Congress would not require a State which imposed new limits on finance charges or interest rates to specifically state that they were to apply to FHA/VA insured transactions.

In the grant of preemption under Section 1735f-7(a) State laws were addressed universally and with the understanding that they applied to transactions under the National Housing Act (FHA/VA). In providing for the preemption to be lifted by a State in 1735f-7(b), it would be extraordinary in the context of the language used for Congress to have intended that non-universal or FHA/VA specific language was required to reimpose state limits.[10]

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[10] The effort to engraft additional meaning on the use of the word "such" in subsection (b) is remindful of the following passage:

> "When I use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean—neither more nor less."
>
> "The question is," said Alice, "whether you can make words mean so many different things."
>
> "The question is," said Humpty Dumpty, "which is to be master—that's all."
>
> Alice was too puzzled to say anything; ....

Alice Through The Looking Glass, Lewis Carroll, Ch. VI.

(b) If Congress Had Intended The Use Of "Magic Words" By A State Legislature To Override The FHA/VA Preemption, It Knew How To Do So.

"All of the statutes in question were enacted by the 96th Congress in a six month time span. The same House and Senate committees considered both the FHA and DIDMCA statutes." *Doyle*, 795 F.2d at 911. "Congress was already considering this language [DIDMCA] at the time the FHA preemption was enacted." *Id.* at 913.

DIDMCA also contained an override provision but specifically required that the State override legislation "state explicitly and by its terms that such State does not want the provisions of subsection (a)(1) to apply with respect to loans, mortgages, credit sales, and advances made in such State." Section 501(b)(2). The Appeals Court put it so well when it opined that "Congress knew the type of language to use when it intended that state override provisions make specific reference to the federal preemption." 795 F.2d at 913.[11]

Consistent with the understanding that Congress knew how to impose a more specific requirement on the States, is the principle of constitutional jurisprudence that limits on the exercise of powers historically within the province of the States will not be implied unless it is clear that Congress so intended.

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[11] It is an accepted rule of statutory construction that a "change of [statutory] language is some evidence of a change of purpose." *Johnson v. United States*, 225 U.S. 405, 415 (1912). It is "a workable rule of construction, not an infallible guide to legislative intent, and cannot overcome more persuasive evidence." *United States v. Dickerson*, 310 U.S. 554, 561 (1940). *Cf, McElroy v. United States*, 455 U.S. 642, 650, n. 13 (1982).

Milwaukee v. Illinois, 451 U.S. 304, 316 (1981). The regulation of finance charges and interest rates has been recognized as an area of law within the "long-standing authority of States." Comments of Senator Morgan, S.Rep. No. 96-368, Oct. 15, 1979, at 41, *reprinted in* 1980 U.S. Code Cong. & Admin. News, 236, 277; *accord, Doyle,* 795 F.2d at 914.

(c) The Legislative History Belies Any Requirement For Special Language To Override FHA/VA Preemption.

The Court of Appeals concluded that the legislative history "provides no firm guidance," 795 F.2d at 913, but closer analysis indicates that it does. In the House Report, the Committee stated:

> Section 310 of the bill would add a new section 529 to the National Housing Act which would provide that the provision of any State Constitution or law expressly limiting the rate or amount of interest, discount points or other charges which may be charged or received by lenders shall not apply to any loan, mortgage or advance which is insured under titles I or II of the National Housing Act. The section would also provide that this exemption would not apply to such loans, mortgages or advances if a State were to enact such a limitation after the effective date of this section.

H.R. Rep. No. 154, *reprinted in* 1979 U.S. Code Cong. & Admin. News, 2317, 2379. It is obvious that the House committee was referring to the State's general laws limiting finance charge rates, interest, discount points or other charges. It was not referring to an override brought about by some specifically required language as suggested by petitioner.

Similarly, the Senate report states that these federally insured loans "would not be exempt in any state that reinstated its anti-usury provision after the effective date of the new federal law." S.Rep. No. 260, *reprinted in* U.S. Code Cong. & Admin. News 1894, 1917.

With the FHA counterpart, the Senate report referred to override when States reenacted a "usury limit applying to FHA loans." S.Rep. No. 164, 96th Cong., 1st Sess. 33 (1979). The House report spoke of override when a "state may act to subject these FHA instruments to state usury ceilings." H.Rep. No. 154, *supra* at 2340. Since the State laws being preempted were not laws specifically setting rate limits or usury ceilings on FHA loans alone, it is illogical to assume that a State would have to specifically refer to FHA loans to reimpose those limits or ceilings to accomplish the override permitted by Congress.

(d) The Circuit Court Position Is Consistent With The U.S. Department Of Housing And Urban Development's Interpretation Of FHA/VA Preemption.

The trade organization for companies which finance mobile home purchases solicited an opinion letter in 1985 to assist in the defense of the current litigation. There was no doubt considerable chagrin when they realized that the April 1, 1985 letter from HUD General Deputy Assistant, Shirley Wiseman, supported the contentions of the plaintiff concerning override of FHA/VA preemption.

The pertinent conclusion is contained on page 3 of the Wiseman letter which is reprinted at 61a in the appendices to the petition.

> However, if a State acts to override the Federal preemption, the lenders must ascertain whether preemption may still be available. For example, Section 529(b) [12 U.S.C.A. Section 1735f-7(b)] of the National Housing Act states *an override occurs if a State enacts a provision of law after the effective date of Section 529 which limits the rate or amount of interest,* discount points, or other charges *on a manufactured home loan.* There is no time limit as to when a State can take such action to override the Federal preemption. On the other hand, the ability of a State to override Section 501 [*DIDMCA*] *is more circumscribed,* because the State must do more than limit the rate or amount of interest, discount points or other charges on the loan; the State must either adopt a law or certify that the voters of the State have voted in favor of a provision *which states explicitly and by its terms that it does not want the provisions of Section 501(a)(1) to apply in that State....* (emphasis added).

There in a nutshell, the HUD official has contrasted the difference between FHA/VA preemption which is overridden by a state's mere enactment of a law setting finance charge limits and DIDMCA preemption which required specific language to override.

The HUD letter then sets forth examples of how override might occur. The pertinent example for the present case is the one which appears at pages 61a-62a of the appendix to the petition.

> 1. a. State Action: During the above-referred 3-year period, a State enacts a law which limits the rate or amount of interest, discount points,

> or other charges on a manufactured home loan, but does not explicitly and by its terms state that the provisions of Section 501(a)(1) of the Deregulation Act will not apply.
>
> b. Legal Consequences. The State has overridden Section 529 of the National Housing Act.
>
> c. Rights of Lenders: Title I manufactured home lenders may thereafter charge preemptive interest rates only pursuant to Section 501(a)(1) of the Deregulation Act [DIDMCA].

Thus a decision by a state legislature, as was the case in Georgia in 1980, to reenact or to continue to subject mobile home financing to limits on finance charges was an override of FHA/VA preemption. A mobile home finance company could still continue to preempt state laws by complying with DIDMCA and its more extensive consumer protections. The finance company in the present case chose not to give those protections but nevertheless assessed the higher finance charges and thus finds itself in litigation for having violated the limits set forth in Georgia law.

It is well established that courts give deference and "attentiveness to the views of the administrative entity appointed to apply and enforce a statute." *Ford Motor Credit Co. v. Milhollin,* 444 U.S. 555, 565 (1980). "Considerable respect is due 'the interpretation given [a] statute by the officers or agency charged with its administration.'" Id. at 566, *quoting Zenith Radio Corp. v. United States,* 437 U.S. 443, 450 (1978), and other cases there cited. *Ex parte* agency opinions solicited by regulated companies would usually be suspect. But here the opinion is adverse to the supplicant. Thus it follows that the interpretation of the FHA/VA statutes by HUD can be given great weight in this case. The

EDITOR'S NOTE

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HUD interpretation is consistent with a logical reading of the words of the statute, and the logical import of the legislative history. The HUD interpretation is consistent with the notion that Congress intended to make the override of FHA/VA preemption easier to accomplish as it knew that it would soon have DIDMCA in place with the more extensive protections for mobile home purchasers.

(e) Petitioner's Suggested Anomaly Disappears Upon Analysis.

The finance company suggests at pages 17 and 18 of its petition that the Court of Appeals' decision creates "anomalous results." The finance company argues that a reenactment of finance charge or interest limits for mobile homes sales would make a State powerless to avoid overriding preemption "for federally insured loans" even if it did not wish to do so. However, this argument is undermined by the very example cited by the finance company on page 18 of the petition. All the State had to do, as Georgia did in 1979 for conventional loans, was simply provide in any statute that rate limitations would not apply to transactions "insured by the United States or any agency or instrumentality thereof." O.C.G.A. Section 7-4-3(c)(5), 1979 Georgia Laws, page 357. Regardless of whether preemption was available under Federal law, a State was free to simply remove finance charges or interest limits on any category of transaction.

As the Court of Appeals noted, it was consistent with Congressional policy to allow States as much deference as possible in the matter of finance charges and interest rates. When Georgia reinstituted its finance charge limits for mobile home purchases in 1980, it did so in a fashion that was consistent with

the concerns of Congress—Georgia raised the permissible finance charges in response to a higher cost of funds which existed at that time.

(f) Petitioner's Argument Was Made To And Rejected By Congress.

In 1985, the National Manufactured Housing Finance Association, on behalf of Fort Wayne Mortgage Company and others,[12] petitioned the United States Senate to enact legislation codifying the argument which petitioner has made before the Court of Appeals and which it raises in its present petition.[13] The 99th Congress expired without the introduction of any legislation on this subject, and without any action by the Senate committee or the Congress as a whole. While this Court is "chary of attributing significance to Congress' failure to act, a refusal by Congress to overrule an agency's construction of legislation is at least some evidence of the reasonableness of that construction, particularly where the administrative construction has been brought to Congress' attention through legislation specifically designed to supplant it." *United States*

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[12] *Mobile Home Usury Preemptions: Hearing before the Subcommittee on Financial Institutions and Consumer Affairs of the Senate Committee on Banking, Housing and Urban Affairs,* 99th Cong., 1st Sess. 220, S. Hrg. 99-1382, p.153 (1985). The report of these hearings will hereinafter be cited as "1985 Senate Hearings."

[13] "The finance companies asked for "a similar direct statement by the Congress that it was its intent in enacting the FHA usury preemption that a state could opt-out of the coverage of the preemption only by the state's affirmative expression of intent to reassert state control with specific reference to such FHA-insured loans, advances and credit sales." 1985 Senate Hearings at 179.

v. Riverside Bayview Homes, Inc., 474 U.S. ___, 88 L.Ed.2d 419, 433 (1985).

E. No Public Good Would Be Served By Creating A Loophole To Validate The Finance Company's Illegal Finance Rates

As is the case with almost all certiorari petitions which come before this Court, the finance company argues that unless its petition is accepted and its view adopted, calamity will befall the nation. In the present petition, the specter raised is that of the collapse of the housing finance industry. Also the finance company portrays itself as an unwary victim of technical legislation. This is utter nonsense.

To fully understand mobile home purchase financing in the early 1980s, one must go back to February of 1980. FHA/VA preemptions with their easy override clauses had been passed in November and December of 1979. Congress was at work on a major overhaul of Federal preemption of State limits on finance charges and interest rates in the legislation that eventually became DIDMCA. The National Manufactured Housing Finance Association, of which Fort Mortgage Company is a member[14], petitioned leaders of Congress for the opportunity to suggest another preemption of State laws limiting finance charges as they applied to mobile home purchases.[15]

In order to induce acceptance of the finance industry request for preemption of State laws, the industry argued that it would move away from contracts giving strong-arm rights to the creditor and would

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[14] 1985 Senate Hearings, p. 153.

[15] Senate hearings at p. 171.

move toward "financing instruments...more like those used in real property mortgage transactions.[16] To "accelerate this development in the market place of such desirable protections", the industry suggested to Congress that preemption from State laws be conditioned upon protections for mobile home purchasers as would be prescribed by the Federal Home Loan Bank Board. (FHLBB). In their testimony to the House committee considering the law, the finance companies noted that loans and sales "*would not qualify* for the exemption" if they failed "to incorporate appropriate purchaser protections."[17] (emphasis added).

Congress accepted the finance company's arguments. In March of 1980, DIDMCA was passed. As noted earlier, the mobile home finance provisions are contained in the Act at Title V, Section 501, codified at 12 U.S.C.A. Section 1735f-7, (note), and conditioned preemption on the use of contracts which give extensive consumer protection benefits.

Section 501(a)(1) of DIDMCA provided that state limits on finance charges in connection with a loan, mortgage or credit sale on a residential manufactured home (mobile home) would be preempted after March 31, 1980. Section 501(c) of the Act provided that the preemption would not apply "to a loan, mortgage, [or] credit sale" on a mobile home "*unless the terms and conditions relating to such loan, mortgage, [or] credit sale*" complied with consumer protection provisions in regulations prescribed by the FHLBB. (emphasis added). In other words, to enjoy preemption

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[16] *Id.* at 205-206.

[17] *Id.* at 207-208.

from State limits on finance charges, the "terms and conditions" of the credit sale had to comply with the regulations. Nothing could be simpler or more straightforward.

House Conference Report No. 96-842 in discussing preemption of finance charges in connection with mobile home loans stated the following:

> *Manufactured home financing is covered by the mortgage usury preemption as long as such financing complies with the consumer protection provisions specified in regulations of the FHLBB.* (emphasis added).

Reprinted in 1980 U. S. Code Cong. & Admin. News, 309. Again the message is clear and unmistakable; if one wants preemption, one must pay the price.

The FHLBB in adopting regulations pursuant to this Act, made it clear that the sale or loan documents had to comply with the consumer protection regulations or else the transaction would be subject to attack under State "usury" laws. Federal Register, May 20, 1980, Vol. 45, p. 31122 and June 30, 1980, Vol. 45, p. 43681.

In the first substantial litigation concerning compliance *vel non* with the requirements of consumer protection in the FHLBB regulations, the Eleventh Circuit Court of Appeals held without dissent that preemption is unavailable to a creditor "if the financing agreement contains express provisions authorizing conduct contrary to the statute or regulations." *Grant v. General Electric Credit Corp.*, 764 F.2d 1404, 1405-06 (11 Cir. 1985) (*en banc*), *cert. den.*, ___ U.S. ___ ; *Quiller v. BarclaysAmerican/*

Credit, Inc., 764 F.2d 1400 (11 Cir. 1985) (*en banc*), *cert. den.*, ___ U.S. ___.[18]

Thus, mobile home finance companies should have known from the very beginning that Congress was allowing continued preemption from state limits on mobile home finance charges only on the condition, suggested by the finance companies, that consumer protections be included in the sale and financing documents. As the finance companies acknowledged during the hearings prior to DIDMCA, a failure to comply with these consumer protections would mean that the underlying transactions would be subject to the remedies of State law. This was repeated in the legislative history by the Congressional committees and by the FHLBB as it adopted the underlying regulations.

It has now developed that a few finance companies have been caught exacting the higher finance charges while preserving collection remedies inconsistent with DIDMCA. Petitioner Fort Wayne is guilty on both its conventional and FHA/VA forms. It never had any intent to protect the consumer, only to collect the high finance charges. That explains why Fort Wayne is so desperate to have a skewed construction of the FHA/VA preemption and invalidate the 1980 Georgia override.

Numerous finance companies and lenders, in drafting their form contracts, have paid specific attention to the "price for preemption" and have specifically

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[18] The Court of Appeals split by votes of 6-5 and 8-3 on whether two particular form contracts were contrary to the regulations. But as to the principle that preemption was not available for a contract authorizing conduct contrary to the regulations, there was no dissent.

granted as terms of the contract the right to notice of default and a contractual right to cure, and have insured that the other terms and provisions of the forms were consistent with the consumer protections required by DIDMCA.[19] The fact of the matter is that only a few finance companies are known to have charged finance charges in excess of those permitted by state law while not meeting the requirements for preemption. These finance companies, whose contracts are in violation of State law, are subject to the remedies provided by State law and arguments concerning the economic consequences to either party are irrelevant.[20]

It is fallacious for the finance company to argue as it does at page 9 of its petition that its excessive finance rate was justified by economic circumstances. The term "prime rate" is an elusive term,[21] and ill-fitted for a long-term mobile home financing contract. The more appropriate gauge is long-term debt instruments. Treasury issues maturing in 1998 were yielding 13.15% during the month in which the Wood/Fort Wayne contract was entered. *Wall Street Journal,* February 23, 1982, p. 52, col. 4. The average contract interest rate on conventional first mortgage

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[19] 1985 Senate Hearings, *supra,* pp. 20, 51-52, 53-54, 55-56, 270-271.

[20] Whether statutes accord with good policy is irrelevant in arriving at the meaning of statutes. "Courts are not authorized to rewrite a statute because they deem its effects susceptible of improvement." *Badaracco v. Commissioner,* 464 U.S. 386, 398 (1984); *accord, Rubin v. United States,* 449 U.S. 424, 431, n. 8 (1981).

[21] *Kleiner v. First National Bank,* 526 F.Supp. 1019, 1021 (N.D. Ga. 1981).

loans for the purchase of single family homes during the calendar year 1982 was but 14.5%. U.S. Dept. of Commerce, Bureau of the Census, *1985 Statistical Abstract of the United States,* 105th Ed., No. 1329. The finance company simply got greedy to lock in 18.5% return over 15 years on the Wood mobile home purchase and did not take care to determine whether or not its form contract complied with any extant federal preemption statute.

It is also misleading for any party to assert that the resolution of the issue at hand will have wide ranging impact. Few mobile home credit contracts are presently being written in reliance on preemption of State usury limits by Federal law. 1985 Senate Hearing, *supra,* at 266. Falling interest rates and changes in State finance and usury laws have reduced the need for preemption of State laws in order to make purchase funds available. Indeed, Georgia has opted-out of both the FHA/VA and DIDMCA preemption schemes.

Of the outstanding mobile home financing contracts across the country, many are transactions that preceded any type of Federal preemption. Many of the transactions were made in the fourteen states that had no usury or finance charge limits or had limits higher than market rates.[22] Also, prior to April, 1983, fifteen states specifically opted-out of the more extensive DIDMCA protections and returned to state-imposed limits and standards.[23] Eight other states

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[22] 1985 Senate Hearings, supra, at pp. 93, 141.

[23] Under DIDMCA Section 501(a)(2) (94 Stat. 162) States were given the opportunity, until April 1, 1983, to override the preemptive provisions of the Act. The following States did so

eliminated finance and usury limits for some or all mobile home transactions.[24]

Not only do the laws of many states not regulate the rates used for mobile home transactions, some

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(the effective dates of the override laws are noted in parentheses): Colo. Rev. Stat. Section 5-13-105 (Supp. 1985) (July 1, 1981); Ga. Code Ann. Section 7-4-20 (Supp. 1985) (Mar. 31, 1983); Hawaii Rev. Stat. Section 478-12 (Supp. 1984) (May 30, 1980); Idaho Code Section 28-49-105 (Supp. 1985) (Mar. 31, 1983); 1980 Iowa Acts ch. 1156, Section 32 (May 9, 1980); Kan. Stat. Ann. Section 16-207a (1981) (May 17, 1980); Me. Rev. Stat. Ann. tit. 9-A, Section 1-110 (Supp. 1985) (May 18, 1983); 1981 Mass. Acts ch. 231, Section 2 (Sept. 2, 1981); Minn. Stat. Ann. Section 47.203 (West Supp. 1986) (June 2, 1981); 1982 Neb. Laws L.B. 623 (July 17, 1982); 1981 Nev. Stat. ch. 668, Section 11 (June 14, 1981); N.C. Gen. Stat. Section 24-2.3 (Supp. 1985) (Mar. 31, 1983); 1981 S.C. Acts No. 6 (Mar. 2, 1981); 1982 S.C. Acts No. 385; S.D. Codified Laws Ann. Section 54-3-15 (Supp. 1984) (Mar 5, 1981); 1981 Wis. Laws ch. 45, Section 50 (Nov. 1, 1981).

[24] See Ariz. Rev. Stat. Ann. Sections 44-1201(A), 44-6002 (Supp. 1985); Cal. Health & Safety Code Section 18039.5 (West 1984); Mont. Code Ann. Section 31-1-241(1) (1985); N.H. Rev. Stat. Ann. Section 361-A:8 (1984); N.M. Stat. Ann. Section 56-8-11.1 (Supp. 1985); Or. Rev. Stat. Section 82-010 (1985); Utah Code Ann. Sections 15-1-1, 70C-2-101 (Supp. 1985); Va. Code Sections 6.1-330.37, 6.1-330.21 (1983); *id.* Sections 46.1-515 *et seq.* (1980 & Supp. 1985). In other States, there are no interest limits for certain types of loans. *E.g.*, Ala. Code Section 8-8-5 (1984); Alaska Stat. Section 45.45.010(b) (Supp. 1985) (no limit for loans over $25,000); Conn.. Gen.Stat. Ann. Section 37-9 (West Supp. 1985) (no limit for loans extended by certain financial institutions); Del. Code Ann. tit. 5, Section 2907 (Supp. 1985) (motor vehicle financing); Ill. Ann. Stat. ch. 17, Section 6404 (Smith-Hurd Supp. 1985); Ky. Rev. Stat. Ann. Section 360.150(2) and (13) (Bobbs-Merrill Supp. 1984); *id.* Section 360.010(1)(b); N.J. Stat. Ann. Section 17:16C-41 (West 1984); N.Y. Pers. Prop. Law Section 404(1) (McKinney Supp. 1986) (retail installment sales); Wyo. Stat. Section 40-14-212 (Supp. 1985) (no limit over $25,000); id. Section 40-14-348 (no limit over $25,000).

states have defenses available to lenders such as correcting technical violations in a contract before the borrower complains. The remedies available to purchasers or borrowers in some states are minor. Also, many consumers refinance or prepay their mobile home contracts leading to many of the debts on offending contract forms being no longer outstanding. Combining this with the fact that most finance companies used form contracts which qualified for preemption in those states where there was legislation to limit finance charges, it is a gross distortion and exaggeration for the finance companies to advance a "sky is falling" argument.[25]

CONCLUSION

While this case has enormous consequences for the families who have been overcharged in their mobile home transactions, it is not a paradigm with far reaching implications as petitioner suggests. It is a case in which the Court of Appeals has made a de-

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[25] Where mobile home financing contracts ended up as a part of GNMA pools, GNMA is protected by the obligation of the finance companies to repurchase and pay off any contracts which are for any reason defective. "Issuers [finance companies] are responsible for correcting any defects in pooled loans or buying the defective loans out of the pools at par.... If a mortgage is found to be defective after the four month period, the defect shall be promptly cured, or the loan shall be bought out at par, without the need to be replaced." Government National Mortgage Association, GNMA I, *Mortgage-Backed Securities Guide,* GNMA 5500.1, Rev. 6, p. 4-2. GNMA monitors the solvency of the issuers who place contracts into GNMA pools and requires an audited net worth for issuers dealing in mobile homes of "$500,000 plus 0.2 percent of such securities outstanding in excess of $35 million." *Id.* at 2-5.

cision that logically applies the override provisions in FHA/VA preemption consistent with the enactments of Congress when it passed the three preemption statutes during a six month period of the 96th Congress. The decision is consistent with the interpretation of the agency charged with responsibility for enforcing the FHA/VA housing programs. Moreover, when the argument now being made by the finance company was presented on its behalf to the Senate Banking Committee in 1985, it did not generate enough support to signal any concern from that body that the override provisions of FHA/VA were being misapplied.

The petition for a writ of certiorari in No. 87-383 should be denied.

Respectfully submitted,

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APPENDIX A

STATUTES AND REGULATIONS INVOLVED

The Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. 96-221, Title V, § 501, March 31, 1980, 94 Stat. 161, 12 USCA § 1735f-7 note, as amended by Pub. L. 96-399, Title III, §§ 308(c)(6), 324(a),(e), Oct. 8, 1980, 94 Stat. 1641, 1647, 1648; Pub. L. 97-35, Title III, § 384, Aug 13, 1981, 95 Stat. 432, provides that:

> (a) (1) The provisions of the constitution or the laws of any State expressly limiting the rate or amount of interest, discount points, finance charges, or other charges which may be charged, taken, received, or reserved shall not apply to any loan, mortgage, credit sale, or advance which is—
>
> (A) secured by a first lien on residential real property, by a first lien on all stock allocated to a dwelling unit in a residential cooperative housing corporation, or by a first lien on a residential manufactured home;
>
> (B) made after March 31, 1980; and
>
> (C) described in section 527(b) of the National Housing Act (12 U.S.C. 1735f-5(b)) [section 1735f-5(b) of this title], except that for the purpose of this section—
>
> (i) the limitation described in section 527(b)(1) of such Act [section 1735f-5(b)(1) of this title] that the property must be designed principally for the occupancy of from one to four families shall not apply;
>
> (ii) the requirement contained in section 527(b)(1) of such Act [section 1735f-5(b)(1) of this title] that the loan be secured by residential real property shall not apply to a loan secured by stock in a residential cooperative housing corporation nor to a loan or credit sale secured by a first lien on a residential manufactured home;

(iii)the term 'federally related mortgage loan' in section 527(b) of such Act [section 1735f-5(b) of this title] shall include a credit sale which is secured by a first lien on a residential manufactured home and which otherwise meets the definitional requirements of section 527(b) of such Act [section 1735f-5(b) of this title], as those requirements are modified by this section;

(iv) the term 'residential loans' in section 527(b)(2)(D) of such Act [section 1735f-5(b) (2)(D) of this title] shall also include loans or credit sales secured by a first lien on a residential manufactured home;

(v) the requirement contained in section 527(b)(2)(D) of such Act [section 1735f-5(b)(2)(D) of this title] that a creditor make or invest in loans aggregating more than $1,000,000 per year shall not apply to a creditor selling residential manufactured homes financed by loans or credit sales secured by first liens on residential manufactured homes if the creditor has an arrangement to sell such loans or credit sales in whole or in part, or if such loans or credit sales are sold in whole or in part to a lender, institution, or creditor described in section 527(b) of such Act [section 1735f-5(b) of this title] or in this section or a creditor, as defined in section 103(f) of the Truth in Lending Act [section 1602(f) of Title 15, Commerce and Trade], as such section was in effect on the day preceding the date of enactment of this title [Mar. 31, 1980], if such creditor makes or invests in residential real estate loans or loans or credit sales secured by first liens on residential manufactured homes aggregating more than $1,000,000 per year; and

(vi) the term 'lender' in section 527(b)(2)(A) of such Act [section 1735f-5(b)(2)(A) of this title] shall also be deemed to include any lender approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act [this chapter], and any individual who finances the sale or

exchange of residential real property or a residential manufactured home which such individual owns and which such individual occupies or has occupied as his principal residence.

(2) (A) The provisions of the constitution or law of any State expressly limiting the rate or amount of interest which may be charged, taken, received, or reserved shall not apply to any deposit or account held by, or other obligation of a depository institution. For purposes of this paragraph, the term 'depository institution' means—

(i) any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) [section 1813 of this title];

(ii) any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) [section 1813 of this title];

(iii)any savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) [section 1813 of this title];

(iv) any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) [section 1752 of this title];

(v) any member as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422) [section 1422 of this title]; and

(vi) any insured institution as defined in section 408 of the National Housing Act (12 U.S.C. 1730a) [section 1730a of this title].

(B) This paragraph shall not apply to any such deposit, account, or obligation which is payable only at an office of an insured bank, as defined in section 3 of the Federal Deposit Insurance Act [section 1813 of this title], located in the Commonwealth of Puerto Rico.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of subsection (a)(1) shall apply to any loan, mortgage, credit sale, or advance made in any State on or after April 1, 1980.

(2) Except as provided in paragraph (3), the provisions of subsection (a)(1) shall not apply to any loan, mortgage, credit sale, or advance made in any State after the date (on or after April 1, 1980, and before April 1, 1983) on which such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the provisions of subsection (a)(1) to apply with respect to loans, mortgages, credit sales, and advances made in such State.

(3) In any case in which a State takes an action described in paragraph (2), the provisions of subsection (a)(1) shall continue to apply to—

(A) any loan, mortgage, credit sale, or advance which is made after the date such action was taken pursuant to a commitment therefor which was entered during the period beginning on April 1, 1980, and ending on the date on which such States takes such action; and

(B) any loan, mortgage, or advance which is a rollover of a loan, mortgage, or advance, as described in regulations of the Federal Home Loan Bank Board, which was made or committed to be made during the period beginning on April 1, 1980, and ending on the date on which such State takes any action described in paragraph (2).

(4) At any time after the date of enactment of this Act [Mar. 31, 1980], any State may adopt a provision of law placing limitations on discount points or such other charges on any loan, mortgage, credit sale, or advance described in subsection (a)(1).

(c) The provisions of subsection (a)(1) shall not apply to a loan, mortgage, credit sale, or advance which is secured

by a first lien on a residential manufactured home unless the terms and conditions relating to such loan, mortgage, credit sale, or advance comply with consumer protection provisions specified in regulations prescribed by the Federal Home Loan Bank Board. Such regulations shall—

(1) include consumer protection provisions with respect to balloon payments, prepayment penalties, late charges and deferred fees;

(2) require a 30-day notice prior to instituting any action leading to repossession or foreclosure (except in the case of abandonment or other extreme circumstances);

(3) require that upon prepayment in full, the debtor shall be entitled to a refund of the unearned portion of the precomputed finance charge in an amount not less than the amount which would be calculated by the actuarial method, except that the debtor shall not be entitled to a refund which is less than $1; and

(4) include such other provisions as the Federal Home Loan Bank Board may prescribe after a finding that additional protections are required.

(d) The provisions of subsection (c) shall not apply to a loan, mortgage, credit sale, or advance secured by a first lien on a residential manufactured home until regulations required to be issued pursuant to paragraphs (1), (2), and (3) of subsection (c) take effect, except that the provisions of subsection (c) shall apply in the case of such a loan, mortgage, credit sale, or advance made prior to the date on which such regulations take effect if the loan, mortgage, credit sale, or advance includes a precomputed finance charge and does not provide that, upon prepayment in full, the refund of the unearned portion of the precomputed finance charge is in an amount not less the amount which would be calculated by the actuarial method, except that the debtor shall not be entitled to a refund which is

less than $1. The Federal Home Loan Bank Board shall issue regulations pursuant to the provisions of paragraphs (1), (2), and (3) of subsection (c) that shall take effect prospectively not less than 30 days after publication in the Federal Register and not later than 120 days from the date of enactment of this Act [Mar. 31, 1980].

(e) For the purpose of this section—

(1) a 'prepayment' occurs upon—

(A) the refinancing or consolidation of the indebtedness;

(B) the actual prepayment of the indebtedness by the consumer whether voluntarily or following acceleration of the payment obligation by the creditor; or

(C) the entry of a judgment for the indebtedness in favor of the creditor;

(2) the term 'actuarial method' means the method of allocating payments made on a debt between the outstanding balance of the obligation and the precomputed finance charge pursuant to which a payment is applied first to the accrued precomputed finance charge and any remainder is subtracted from, or any deficiency is added to, the outstanding balance of the obligation;

(3) the term 'precomputed finance charge' means interest or a time price differential within the meaning of sections 106(a)(1) and (2) of the Truth in Lending Act (15 U.S.C. 1605(a)(1) and (2) [section 1605(a)(1) and (2) of Title 15, Commerce and Trade] as computed by an add-on or discount method; and

(4) the term 'residential manufactured home' means a manufactured home as defined in section 603(6) of the National Mobile Home Construction and Safety Standards Act of 1974 [now the National Manufactured Housing Construction and Safety Standards Act of 1974 (section 5402(6) of Title 42, The Public Health and Welfare)] which is used as a residence.

(f) The Federal Home Loan Bank Board is authorized to issue rules and regulations and to publish interpretations governing the implementation of this section.

(g) This section takes effect on April 1, 1980.

OCGA § 10-1-33(a) provides in pertinent part that:

(a) Notwithstanding any other law, the finance charge, exclusive of insurance and other benefits and official fees, shall not exceed the following rates:

Class 1. Any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made and all vehicles not previously titled — $10.00 per $100.00. per year.

OCGA § 10-1-38(b)(c) provides in pertinent part that:

(b) A violation of Code Section 10-1-33 by the seller or holder shall bar recovery of any finance charge, delinquency, or collection charge on the contract.

(c) In case of a willful violation of this article with respect to any transaction, the buyer in such transaction may recover from the person committing the violation (or may set off or counterclaim in any action by such person) a minimum of $100.00 or double the time price differential and any delinquency charge and any attorneys' fees and court costs charged and paid with respect to such transaction, but the seller may recover from the buyer an amount equal to the cash price of the goods or services in such transaction and the cost of any insurance purchased by the seller for the buyer in connection therewith.

REGULATIONS

45 Fed. Reg. 31122 (May 12, 1980) (proposed May 5, 1980) provides in pertinent part:

SUPPLEMENTARY INFORMATION:

Background

The Federal Home Loan Bank Board is proposing amendments to its regulations in 12 CFR 590.4 on the

preemption of state usury ceilings on mobile home loans (*see* 45 FR 24112, April 9, 1980). At present, these regulations, which implement section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980 ("Act"), Pub.L. 96-221, 94 Stat. 161, provide that interest rates on mobile home loans made by any covered lender after March 31, 1980, may exceed state usury ceilings if, in the event of prepayment, unearned precomputed finance charges on the outstanding loan balance are refunded to the borrower in an amount not less than that computed by the actuarial method.

The Act provides that the actuarial rebate will be the only limitation on the usury preemption with respect to mobile home loans until the Board adopts regulations requiring more extensive protections for the mobile home buyer. Once the Board adopts such regulatory provisions (which must be effective by July 30, 1980), state usury ceilings may be exceeded by a lender covered by the Act only if the loan complies with such regulations. A mobile home loan not complying with the regulations would be open to attack under state usury laws.

45 Fed. Reg. 43681 (June 30, 1980) provides in pertinent part that:

SUMMARY: The rules prescribe consumer protections which must be included in loans secured by first liens on mobile homes before such loans are eligible for the state usury law exemption contained in section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980 and implementing regulations (12 C.F.R. Part 590).

45 Fed. Reg. 43681, 43682 (June 30, 1980) provides in pertinent part that:

DISCUSSION OF FINAL AMENDMENTS

Applicability. These regulations apply only when a creditor covered by the Act chooses to charge an interest rate which exceeds the state's usury limit on mobile home loans.

12 C.F.R. § 590.4 provides that:

§ 590.4 Consumer protection rules for federally-related loans, mortgages, credit sales and advances secured by first liens on residential mobile homes.

(a) *Definitions.* As used in this section:

(1) *Prepayment.* A 'prepayment' occurs upon—

(i) Refinancing or consolidation of the indebtedness;

(ii) Actual prepayment of the indebtedness by the debtor, whether voluntarily or following acceleration of the payment obligation by the creditor; or

(iii)The entry of a judgment for the indebtedness in favor of the creditor.

(2) *Actuarial method.* The term 'actuarial method' means the method of allocating payments made on a debt between the outstanding balance of the obligation and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the outstanding balance of the obligation.

(3) *Precomputed Finance Charge.* The term 'precomputed finance charge' means interest or a time/price differential as computed by the add-on or discount method. Precomputed finance charges do not include loan fees, points, finder's fees, or similar charges.

(4) *Creditor.* The term 'creditor' means any entity covered by this Part, including those which regularly extend or arrange for the extension of credit and assignees that are creditors under section 501(a)(1)(C)(v) of the Depository Institutions Deregulation and Monetary Control Act of 1980.

(b) *General.*

(1) The provisions of the Constitution or the laws of any State expressly limiting the rate or amount of interest, discount points, finance charges, or other charges which may be charged, taken, received, or reserved shall not apply to any loan, mortgage, credit sale, or advance which is secured by a first lien on a residential mobile home if a creditor covered by this Part complies with the consumer protection regulations of this section.

(2) *Relation to State Law.*

(i) In making loans or credit sales subject to this section, creditors shall comply with state and Federal law in accordance with the following:

(A) *State law regulating matters not covered by this section.* When state law regulating matters not covered by this section is otherwise applicable to a loan or credit sale subject to this section, creditors shall comply with such state law provisions.

(B) *State law regulating matters covered by this section.* Creditors need comply only with the provisions of this section, unless the Board determines that an otherwise applicable state law regulating matters covered by this section provides greater protection to consumers. Such determinations shall be published in the FEDERAL REGISTER and shall operate prospectively.

(ii) Any interested party may petition the Board for a determination that state law requirements are more protective of consumers that the provisions of this section. Petitions shall be sent to: Secretary to the Board, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, and shall include:

(A) A copy of the state law to be considered;

(B) Copies of any relevant judicial, regulatory, or administrative interpretations of the state law; and

(C) An opinion or memorandum from the state Attorney General or other appropriate state official having primary enforcement responsibilities for the subject state law provisions, indicating how the state law to be considered offers greater protection to consumers that the Board's regulation.

(c) *Refund of precomputed finance charge.* In the event the entire indebtedness is prepaid, the unearned portion of the precomputed finance charge shall be refunded to the debtor. This refund shall be in an amount not less than the amount which would be refunded if the unearned precomputed finance charge were calculated in accordance with the actuarial method, except that the debtor shall not be entitled to a refund which is less than one dollar. The unearned portion of the precomputed finance charge is, at the option of the creditor, either:

(1) That portion of the precomputed finance charge which is allocable to all unexpired payment periods as originally scheduled, or if deferred, as deferred. A payment period shall be deemed unexpired if prepayment is made within 15 days after the payment period's scheduled due date. The unearned precomputed finance charge is the total of that which would have been earned for each such period had the loan not been precomputed, by applying to unpaid balances of principal, according to the actuarial method, an annual percentage rate based on those charges which are considered precomputed finance charges in this section, assuming that all payments were made as originally scheduled, or as deferred, if deferred. The creditor, at its option, may round this annual percentage rate to the nearest one-quarter of one percent; or

(2) The total precomputed finance charge less the earned precomputed finance charge. The earned precomputed finance charge shall be determined by applying an annual percentage rate based on the total precomputed finance charge (as that term is defined in this section),

under the actuarial method, to the unpaid balances for the actual time those balances were unpaid up to the date of prepayment. If a late charge or deferral fee has been collected, it shall be treated as a payment.

(d) *Prepayment penalties.* A debtor may prepay in full or in part the unpaid balance of the loan at any time without penalty. The right to prepay shall be disclosed in the loan contract in type larger than that used for the body of the document.

(e) *Balloon payments—*

(1) *Federal associations.* Federal association creditors may enter into agreements with debtors which provide for non-amortized and partially-amortized loans on residential manufactured homes, and such loans shall be governed by the provisions of this section and § 545.33(f) of this chapter.

(2) *Other creditors.* All other creditors may enter into agreements with debtors which provide for non-amortized and partially-amortized loans on residential manufactured homes to the extent authorized by applicable Federal or state law or regulation.

(f) *Late charges.*

(1) No late charge may be assessed, imposed, or collected unless provided for by written contract between the creditor and debtor.

(2) To the extent that applicable State law does not provide for a longer period of time, no late charge may be collected on an installment which is paid in full on or before the 15th day after its scheduled or deferred due date even though an earlier maturing installment or a late charge on an earlier installment may not have been paid in full. For purposes of assessing late charges, payments received are deemed to be applied first to current installments.

(3) A late charge may be imposed only once on an installment; however, no such charge may be collected for a late installment which has been deferred.

(4) To the extent that applicable State law does not provide for a lower charge or longer grace period, a late charge on any installment not paid in full on or before the 15th day after its scheduled or deferred due date may not exceed the lesser of $5.00 or five percent of the unpaid amount of the installment.

(5) If, at any time after imposition of a late charge, the lender provides the borrower with written notice regarding amounts claimed to be due but unpaid, the notice shall separately state the total of all late charges claimed.

(6) Interest after the final scheduled maturity date may not exceed the maximum rate otherwise allowable under State law for such contracts, and if such interest is charged, no separate late charge may be made on the final scheduled installment.

(g) *Deferral fees.*

(1) With respect to mobile home credit transactions containing precomputed finance charges, agreements providing for deferral of all or part of one or more installments shall be in writing, signed by the parties, and

(i) Provide, to the extent that applicable state law does not provide for a lower charge, for a charge not exceeding one percent of each installment or part thereof for each month from the date when such installment was due to the date when it is agreed to become payable and proportionately for a part of each month, counting each day as 1/30th of a month;

(ii) Incorporate by reference the transaction to which the deferral applied;

(iii)Disclose each installment or part thereof in the amount to be deferred, the date or dates originally payable, and the date or dates agreed to become payable; and

(iv) Set forth the fact of the deferral charge, the dollar amount of the charge for each installment to be deferred, and the total dollar amount to be paid by the debtor for the privilege of deferring payment.

(2) No term of a writing executed by the debtor shall constitute authority for a creditor unilaterally to grant a deferral with respect to which a charge is to be imposed or collected.

(3) The deferral period is that period of time in which no payment is required or made by reason of the deferral.

(4) Payments received with respect to deferred installments shall be deemed to be applied first to deferred installments.

(5) A charge may not be collected for the deferral of an installment or any part thereof if, with respect to that installment, a refinancing or consolidation agreement is concluded by the parties, or a late charge has been imposed or collected, unless such late charge is refunded to the borrower or credited to the deferral charge.

(h) *Notice before repossession, foreclosure, or acceleration.*

(1) Except in the case of abandonment or other extreme circumstances, no action to repossess or foreclose, or to accelerate payment of the entire outsanding balance of the obligation, may be taken against the debtor until 30 days after the creditor sends the debtor a notice of default in the form set forth in paragraph (h)(2) of this section. Such notice shall be sent by registered or certified mail with return receipt requested. In the case of default on payments, the sum stated in the notice may only include payments in default and applicable late or deferral charges. If the debtor cures the default within 30 days of the postmark of the notice and subsequently defaults a second time, the creditor shall again give notice as de-

scribed above. The debtor is not entitled to notice of default more than twice in any one-year period.

(2) The notice in the following form shall state the nature of the default, the action the debtor must take to cure the default, the creditor's intended actions upon failure of the debtor to cure the default, and the debtor's right to redeem under state law.

TO: _____

DATE: _____, 19____

NOTICE OF DEFAULT AND RIGHT TO CURE DEFAULT

Name, address, and telephone number of creditor _____

_____

Account number, if any _____

Brief identification of credit transaction _____

_____

You are now in default on this credit transaction. You have a right to correct this default within 30 days from the postmarked date of this notice.

If you correct the default, you may continue with the contract as though you did not default. You default consists of: _____ Describe default alleged _____

Cure of default: Within 30 days from the postmarked date of this notice, you may cure your default by (describe the acts necessary for cure, including, if applicable, the amount of payment required, including itemized delinquency or deferral charges).

_____

_____

Creditor's rights: If you do not correct your default in the time allowed, we may exercise our rights against you under the law by (describe action creditor intends to take).

If you have any questions, write (the creditor) _____ at the above address or call (creditor's designated employee) _____ at (telephone number) _____ between the hours of _____ and _____ on (state days of week) _____.

If this default was caused by your failure to make a payment or payments, and you want to pay by mail, please send a check or money order; do not send cash.

APPENDIX B

GEORGIA RETAIL INSTALLMENT CONTRACT
SECURITY AGREEMENT
FEDERAL CONSUMER CREDIT DISCLOSURES

FORT WAYNE MORTGAGE CO.

Date NOV. 26TH, 19 82

Buyer (which means the undersigned Buyers and Co-Buyers, jointly and severally, hereinafter referred to as Buyer, you or your) having been quoted both a Time Price and a lesser Cash Price, hereby purchases from Seller on a time price basis, upon the terms and conditions set forth on the face and reverse sides hereof, the manufactured home described as follows:

New or Used	Year	Make or Trade Name	Model	Manufacturer's Serial Number
NEW	83	SHOWCASE		SHS1WGA25621079

together with all other furnishings, accessories, equipment, tools and parts now attached to or installed in the manufactured home.

The manufactured home is now, or shall be kept at

2100 BURKE STREET Street, City of WAYCROSS, County of WARE, State of GA Zip Code 31501

Seller-Creditor-Name and Address

Showcase Homes
1900 Memorial Drive
Waycross, Ga. 31501

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.	The total cost of your purchase on credit, including your down payment of $ 2000.00
15.00%	$ 22489.98	$ 14751.02	$ 37161.00	$ 39210.00

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
180	$ 206.45	Monthly beginning DECEMBER 2119 82

INSURANCE: You may obtain property insurance from anyone you want that is acceptable to Seller. If you get the insurance from or through Seller, you will pay $ .00e for a term of 0 months.

SECURITY: You are giving a security interest in the goods or property being purchased.

FILING FEES: $ 6.50

LATE CHARGE: If a payment is late, you will be charged $ .00 or %
of the payment, whichever is less.

PREPAYMENT: If you pay off early, you may be entitled to a refund of part of the finance charge.

ASSUMPTION: Someone buying your manufactured home may, subject to conditions, be allowed to assume the remainder of the contract on the original terms.

See the Retail Installment Contract for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

e means an estimate

Itemization of the Amount Financed of $ 18751.02

$ 14893.52 Amount paid on your account.

Amount paid to others on your behalf:

$ 6.50 to public officials

$ .00e to insurance company

$ N/A to

$ 14.00 Prepaid finance charge

Buyer shall pay to Seller, or order, the Total of Payments at the address of Seller stated above or at such other place as the Seller shall designate in writing in equal consecutive monthly installments on the first day of each month in the number and amount and commencing on the date set forth in the payment schedule. In addition, the initial installment payment of the insurance premium shall be $ 24.82

WARNING: LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED UNLESS THE BOX BELOW IS CHECKED.

☐ Liability insurance coverage for bodily injury and property damage caused to others is included in Buyer's insurance policy.

NOTICE TO THE BUYER

DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO AN EXACT COPY OF THE CONTRACT YOU SIGN.

17a

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

It is understood that Seller may assign this Contract to Fort Wayne Mortgage Co. but the assignment shall not be deemed to be accepted until Seller has received the proceeds of the sale of this Contract. The foregoing Contract is accepted by Seller and assigned in accordance with the terms of the Assignment set forth on the reverse side hereof.

Seller Jimmy Jacobs DBA Showcase Mobile Homes By Jimmy Jacobs Title Owner

BUYER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS RETAIL INSTALLMENT CONTRACT, INCLUDING THE ADDITIONAL TERMS AND CONDITIONS ON THE REVERSE SIDE, PRIOR TO THE CONSUMMATION OF THE TRANSACTION.

X *BUYER

X *CO BUYER

*CO BUYER

ADDRESS (Street) (City) (County) (State) (Zip)

*Type or print name beneath signature

SEE REVERSE SIDE

Fort Wayne Mortgage Co. Copyright (C) 1982

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ADDITIONAL TERMS AND CONDITIONS

1. In order to secure payment of the Total of Payments, Buyer grants to Seller a security interest pursuant to the Uniform Commercial Code in the following: (i) the manufactured home, furnishings, accessories, equipment, tools and parts which Buyer purchases from Seller pursuant to this Contract; (ii) accessions to the manufactured home, furnishings, accessories, equipment, tools and parts; (iii) the proceeds of such manufactured home, furnishings, accessories, equipment, tools, parts and accessions, including, but not limited to, the proceeds of insurance policies pertaining thereto; (iv) all furnishings, accessories, equipment, tools and parts attached to, installed in, or used in connection with the manufactured home and acquired by the Buyer within ten (10) days after Buyer acquires the manufactured home; and (v) any unearned insurance premiums refunded upon cancellation of the insurance which Buyer is obligated to furnish under this Contract (hereinafter referred to as "Collateral"). In order to secure payment of the Total of Payments, Buyer also grants to Seller the right to apply any funds held in escrow for payment of insurance premiums to the payment of the indebtedness evidenced hereby upon default by Buyer.

2. In the event Buyer applied for a contract insured by the Federal Housing Administration and an installment is not paid in full within 10 days after its scheduled due date or in the event Buyer applied for a contract guaranteed by the Veteran's Administration and an installment is not paid in full within 15 days after its scheduled due date, Buyer shall pay a late charge in the amount set forth on the face hereof. If this Contract is referred for collection to an attorney not a salaried employee of Seller, to the extent permitted by law Buyer shall pay reasonable attorney's fees plus court costs incurred by Seller. To the extent permitted by law, Buyer shall pay the reasonable expenses incurred by Seller in realizing upon the security interest granted herein.

3. Buyer may prepay in full the indebtedness evidenced by this Contract at any time prior to the maturity of the final installment hereunder. If Buyer so prepays the indebtedness, whether voluntarily or involuntarily, Buyer shall receive a rebate of the unearned portion of the Finance Charge, excluding the Prepaid finance charge, if any, calculated in accordance with the actuarial method using the rate by which the Finance Charge, excluding the Prepaid finance charge, was originally calculated. The Prepaid finance charge shall be earned upon payment. No rebate will be made if the amount thereof is less than $1.00.

4. Buyer represents and warrants that, except for the security interest granted hereby, the Collateral is free and clear of all liens, claims and encumbrances whatsoever, that Buyer has full right and power to grant a security interest therein to Seller, and that the certificate of title thereto is or is about to be registered in Buyer's name. Buyer represents that no financing statement executed by Buyer covering the Collateral, other than a financing statement relating hereto, is on file in any public office. Buyer represents and warrants that the manufactured home shall be used solely as the principal residence of Buyer. Buyer represents and warrants that the manufactured home shall remain personal property and shall not be deemed to be a fixture or a part of the real property on which it is situated, notwithstanding the manner by which it is affixed to the real property.

5. Buyer shall comply with, and shall not permit any violation of, all laws, ordinances, regulations and orders of all public authorities relating to the Collateral. Buyer shall keep and maintain the Collateral in good repair and in a safe condition, shall not permit any lien or encumbrance at any time to accrue thereon, and shall keep the same insured against physical damage, including flood, and theft in an amount not less than the amount of the indebtedness evidenced hereby with such insurers as Seller may, to the extent permitted by law, from time to time approve and shall deliver the policies therefor to Seller, together with receipts evidencing payment in full of the premium thereon, the proceeds of such policies to be payable to Seller and to be applied by Seller, as and when received, to the payment of the indebtedness secured hereby, whether or not then due, or, at Seller's option, to the repair or replacement of the Collateral. If Buyer has authorized Seller to purchase such insurance, the cost thereof is set forth at Item 5 on the face of this Contract. In the event that Buyer shall fail to perform any of Buyer's obligations hereunder, Seller, at its option, may perform the same and all amounts so expended by Seller shall be payable by Buyer to Seller forthwith with interest thereon at the highest rate permitted by law. In the event of any such advances, Seller may apply amounts received to the Total of Payments or to such advances as Seller, in its sole discretion, shall determine.

6. Buyer shall pay to Seller at the times provided herein for installment payments of the Total of Payments, installments of the premiums that will become due and payable in the future to renew the insurance required under paragraph 5 hereof, said installments to be substantially equal and to be in such amounts as will assure to Seller that, not less than thirty (30) days before the time when such premiums become due, Buyer will have paid to Seller a sufficient amount to pay such premiums in full. Such installment payments of insurance premiums need not be segregated or kept in a separate fund and no interest shall be payable thereon. Said amounts shall be applied to the payment of the insurance premiums when the same become due and payable; provided, however, that Seller shall have no liability for any failure to so apply said amounts for any reason whatsoever. Nothing contained herein shall in any manner limit the obligation of Buyer to maintain insurance as above provided. In the event of default by Buyer, Seller may, at its option, but without any obligation on its part so to do, apply said amounts to the payment of the insurance premiums and/or toward payment of any amounts payable by Buyer to Seller under this Contract, whether or not the same are then due and payable.

7. Buyer shall keep the Collateral at the address stated on the face hereof. Buyer shall not sell, encumber or transfer the Collateral, or any part thereof, or remove the Collateral, or any part thereof, from such location or this State, or attempt any such sale, encumbering, transfer or removal, without the prior written consent of Seller. Seller shall be entitled to inspect the Collateral at all reasonable times.

8. Upon the happening of any of the following events or conditions: (a) default in the payment of the indebtedness evidenced by this Contract or the rent for the property on which the manufactured home is situated or in the performance of any of the obligations of Buyer under this Contract; (b) any warranty, representation or statement made or furnished to Seller by or on behalf of Buyer in connection with this Contract proving to have been false or breached in any material respect; (c) loss, theft, damage, destruction, sale or encumbrance of the Collateral, or the making of any levy, seizure or attachment thereof or thereon; (d) insolvency, appointment of a receiver for Buyer, or assignment for the benefit of creditors by Buyer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Buyer, thereupon, or at any time thereafter (such default not having previously been cured) Seller, at its option, may declare said indebtedness to be immediately due and payable and Seller shall have the remedies of a secured party under the Uniform Commercial Code, including without limitation, the right to take possession of the Collateral by any lawful means and to sell the same and for that purpose Seller may enter upon any premises on which the Collateral may be situated and remove the same to such other place as Seller shall determine. After taking possession of the Collateral, Seller may dispose of the same by transferring the Collateral to a person who assumes the obligation of Buyer hereunder or acquires the Collateral subject to such obligations. Such a transfer shall be deemed to be a disposition of the Collateral by private proceedings in accordance with the Uniform Commercial Code and the security interest and terms of this Contract shall continue in full force and effect as to such person. Upon demand by Seller, Buyer shall make the Collateral available to Seller at a place to be designated by Seller which is reasonably convenient to both parties. Any requirement of notice under the Uniform Commercial Code shall be met if such notice is mailed, postage prepaid, to the address where the manufactured home shall be kept specified on the face hereof at least five (5) days before the event with respect to which notice is required. Upon acceleration of the indebtedness, all amounts then or thereafter lawfully due shall bear interest at the highest rate permitted by law.

9. NO REPRESENTATION, PROMISE OR WARRANTY, EXPRESS OR IMPLIED, HAS BEEN MADE WITH RESPECT TO THE MERCHANTABILITY, SUITABILITY OR FITNESS FOR PURPOSE OF THE COLLATERAL, OR OTHERWISE unless the same is contained in a separate written instrument delivered to Buyer on or before the date upon which possession of the Collateral is delivered to Buyer.

10. Time shall be of the essence hereof. The waiver by Seller of any default shall not be deemed a waiver of any other default or any subsequent default. Upon acceptance of the assignment of this Contract, any reference herein to Seller shall include the successors and assigns of Seller. In the event Buyer shall consist of more than one person, their obligations and liability hereunder shall be joint and several. The Federal Consumer Credit Disclosures set forth on the face of this Contract are incorporated in, and made a part of, this Contract.

ASSIGNMENT

Seller assigns to Fort Wayne Mortgage Co., its successors and assigns (Assignee), the foregoing Contract including, but not limited to, all amounts payable by Buyer and the security interest in the Collateral, together with all contracts, claims, actions or causes of action which Seller may have against anyone, including but not limited to the manufacturer of the manufactured home and the Buyer, which in any manner arise out of the purchase of the manufactured home from the manufacturer or the sale thereof to the Buyer. Seller represents and warrants that the foregoing Contract is genuine, that the statements and amounts inserted are correct, that the Buyer had legal capacity to execute the same and is liable thereon, that the Collateral has been sold and possession delivered to and accepted by Buyer on the date Buyer signed FHA Form FH-2 (MH) or VA Form VA26-8644, whichever is applicable, that application for statutory certificate of title in the name of the Buyer stating the name and address of Assignee as the holder of the only security interest in the Collateral has been filed, that the Collateral is free and clear of all liens and encumbrances except the security interest granted by this Contract, that the security interest granted to Seller is a valid first lien on the property described in this Contract, that the full amount of the stated Total of Payments remains unpaid, that there are no setoffs or counterclaims thereto, that Seller is the holder of the Contract and the security interest in the Collateral, free and clear of all liens and encumbrances and that Seller has full power and authority to assign the same, that the transaction was consummated on the above date set forth in the Contract, that the Buyer did not receive possession of the Collateral prior to the date of consummation, that the Buyer was furnished with a completed copy of the Contract prior to consummation, that the Buyer has property insurance in the amount of the indebtedness and that Seller has obtained all licenses and certificates required to cause the sale and the Contract to be enforceable.

If there shall be a claim by Buyer of breach of any of Seller's warranties to Buyer, including, but not limited to, a claim of defects in the manufactured home, or a breach of any of Seller's warranties to Assignee, without regard to Seller's knowledge or lack of knowledge of such breach or Buyer's or Assignee's reliance on such warranty or Buyer asserts against Assignee a defense, setoff, claim or counterclaim based on any alleged act, omission or default by Seller with respect to the Contract or the Collateral, Seller hereby agrees unconditionally to: (i) repurchase said Contract upon demand from Assignee for the then unpaid obligation on said Contract whether or not said Contract shall be in default; and (ii) indemnify and hold Assignee harmless from all claims or counterclaims asserted against Assignee by Buyer arising out of any act, omission or default of Seller. The liability of Seller arising out of this Assignment shall not be affected by any indulgence, compromise, settlement, extension or variation of terms of said Contract. In addition, if signed below, this Assignment includes the provisions of the paragraph set forth below.

Limited Repurchase-If Buyer defaults in the payment of any of the first 3 installments when due, Seller shall repurchase the foregoing Contract for the then unpaid balance of the indebtedness.

Jimmy Jacobs DBA
Showcase Mobile Homes

By Jimmy Jacobs

November 8th, 1982 Its Owner

Fort Wayne Mortgage Co. assigns to _____, its successors and assigns, the foregoing Contract including all amounts payable by Buyer and the security interest in the Collateral, without recourse.

Fort Wayne Mortgage Co.

By _____

_____, 19____ Its _____

Rev. 1/82

18a